IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRD DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE Dr. JUSTICE G.YETHIRAJULU

WRIT PETITION No. 15973 of 2004

Between:

Mohd.Mustafa Ali, S/o Mohd.Ahmed Ali,

Aged about 62 years, Occ: Retired STS,
O/o PGMTD, Hyderabad R/o 18-9-25/A, Chandrayanagutta,
Hyderabad

..... PETITIONER

AND

1 The Union of India rep.by the Secretary to Government,

Ministry of Telecommunications,
Sanchar Bhawan, New Delhi - 110 001
2 The Chairman-cum-Managing Director,

M/s Bharat Sanchar Nigam Limited,
Sanchar Bhawan, New Delhi- 110 001
3 The Chief General Manager (Telecom),

M/s Bharat Sanchar Nigam Limited,
Abids, Hyderabad
4 The Principal General Manager (Telecom),

M/s Bharat Sanchar Nigam Limited, Abids, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue Writ of Mandamus or any other appropriate Writ Order or direction in the nature of Writ directing the Respondents herein to accept the option of the Petitioner herein submitted on 29th May, 2003 for absorption into M/s Bharat Sanchar Nigam Limited with effect from 1st October, 2000 and to grant the IDA Pay Scale of Rs.7,800-11500/- introduced by M/s Bharat Sanchar Nigam Limited with effect from 1st October, 2000 with all consequential benefits such as arrears of pay and allowances, Pension etc. and pass any other order or orders as is deemed fit, proper and necessary in the circumstances of the case and interest of justice.

Counsel for the Petitioner: MR.SIVARAJU SRINIVAS

Counsel for the Respondents: Ch.LAKSHMIKUMARI, SC for BSNL

The Court at the stage of admission made the following:

ORDER:

The petitioner worked as a Senior Telephone Supervisor for about 38 years in Telecom Department. Subsequently it was converted into Bharat Sanchar Nigam Limited (for short "BSNL") with effect from 01.10.2000. The respondents invited options from all employees whether they are inclined to opt the Service Rules of the Department of Telecom or the Service Rules of BSNL. The petitioner could not exercise his option for absorption into BSNL with effect from 01.10.2000. The Department of Tele-communications through its letter dated 02.05.2003 once again invited options from group 'C' and 'D' employees, who had earlier not opted to Government service and they were required to exercise their option within four weeks from the date of the letter.

2. The petitioner contends that he submitted his option form for absorption into BSNL through his representation dated 26.05.2003, addressed to the Principal General Manager, Telecom, Hyderabad and it was received in the said office on 29.05.2003. As there was no response, he submitted reminders on 30.06.2003 and 30.08.2003, but there was no reply. A letter was received from BSNL on 11.06.2003 that the officials who have retired or voluntarily retired after 01.10.2000 are also entitled to exercise option with effect from 01.10.2000 for absorption into BSNL.

3. The petitioner contends that though he exercised the option within the time prescribed, it was not considered and he was not absorbed into BSNL with effect from 01.10.2000 with all consequential benefits. He filed O.A.No.1037 of 2003 before the Central Administrative Tribunal, Hyderabad Bench, but it was dismissed for want of jurisdiction on 27.04.2004. He, therefore, approached this Court through this writ petition, seeking to direct the respondents to accept his option, submitted on 29.05.2003 for absorption into BSNL, with effect from 01.10.2000 with all consequential benefits.

4. The respondents through the counter affidavit resisted the contentions of the petitioner and mainly contended that since the petitioner failed to exercise the option within the time prescribed by the respondents, he is not entitled to absorb into BSNL. Therefore, the writ petition is liable to be dismissed.

5. The point for consideration is whether the petitioner exercised the option within the time prescribed by the respondents, and whether he is entitled to be absorbed into BSNL?

6. The petitioner filed copy of the letter dated 26.05.2003 addressed to the Principal General Manager, Telecom, BSNL and it bears the office stamp of the 4th respondent dated 29.05.2003, and initialed by the concerned officer, who received the same. The respondents are contending that though the last date for submitting the option form was 30.05.2003, the petitioner submitted his option form on 03.06.2003, by which time all the option forms were already processed.

7. Though the respondents are contending that the option form of the petitioner was received on 03.06.2003, they could not specifically deny the genuineness of the receive stamp of their office with date. The respondents did not place any other material to show that the option form of the petitioner was received after 30.05.2003. In the absence of any material from the respondents, and in the light of the date stamp affixed on the copy of the option form of the petitioner, it can be safely concluded that it was received by the concerned authorities before 30.05.2003, which was the last date for receiving the option form.

8. When once the option is exercised by the petitioner within the prescribed time, it is the responsibility of the respondents to process the form for necessary orders regarding the option made by the petitioner for absorption into BSNL.

9. In the light of the above circumstances, the respondents are directed to treat that the option form, given by the petitioner, was

within time, and the respondents are further directed to pass appropriate orders regarding the option of the petitioner for absorption into BSNL, within 8 (eight) weeks from the date of receipt of a copy of this order, and in the event of absorption of the petitioner into BSNL, extend all consequential benefits to the petitioner.

10. The Writ Petition is, accordingly, allowed. No costs.

dsr

ASSISTANT REGISTRAR

To:

1. The Secretary to Governnment,
The Union of India, Ministry of
Telecommunications, Sanchar Bhawan,
New Delhi-110 001

2. The Chairman-cum-Managing Director,
M/s.Bharat Sanchar Nigam Limited,
Sanchar Bhawan, New Delhi-110 001

3. The Chief General Manager (Telecom),
M/s.Bharat Sanchar Nigam Limited,
Abids, Hyderabad

4. The Principal General Manager (Telecom),
M/s.Bharat Sanchar Nigam Limited,
Abids, Hyderabad

5. Two CD copies.